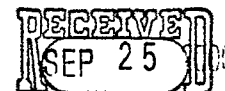


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Environmental Cleanup Office

September 25, 2000

Docket Coordinator, Headquarters  
U.S. EPA CERCLA Docket Office, 5201G  
1200 Pennsylvania Avenue N.W.  
Washington, D.C. 20460

RE: Portland Harbor

Dear Sirs:

The Confederated Tribes of the Warm Springs Reservation of Oregon ("Warm Springs Tribes" or Tribes) appreciate the opportunity to comment on the proposed addition of Portland Harbor on the National Priority List (NPL).

The Portland Harbor area is important to the Warm Springs Tribes for several reasons. First, the Warm Springs Tribes have treaty rights to Willamette River fish runs. The lower Willamette River, including the Portland Harbor area, is important to many of these runs. As stated in EPA's listing materials,

The Willamette River is . . . an important fish stream with spawning populations of chinook and coho salmon, steelhead, American shad, Pacific lamprey, and white sturgeon. The Lower Reach of the Willamette River to Willamette Falls provides a migratory corridor for both juvenile and adult anadromous fish and juvenile rearing habitat for several anadromous fish species. Three runs of chinook, two runs of steelhead, and individual runs of coho and sockeye salmon occur in this area. Several of these runs are either listed or proposed for listing under the Endangered Species Act (NPL Site Narrative for Portland Harbor).

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Second, activities and contamination within the Portland Harbor site could potentially affect Columbia River fish runs. Because Warm Springs tribal members consume higher than average proportions of Willamette River and Columbia River fish, we are concerned not only about how cleanup decisions will affect fish habitat, but also about how cleanup decisions could affect human health. Finally, the Warm Springs Tribes are concerned about how cleanup activities will impact cultural resources located within the Portland Harbor area.

The Warm Springs Tribes believe EPA oversight will result in the most effective cleanup of the Portland Harbor site and we strongly support EPA's decision to place Portland Harbor on the National Priorities List. That being said, we have concerns about both the manner in which the site was proposed and the geographic scope of the listing.

EPA Region 10 forwarded its listing package to EPA headquarters on April 4, 2000. Subsequent to that date, EPA engaged in extended negotiations with Oregon DEQ regarding relative cleanup responsibilities at the Portland Harbor site. Despite having fully participated in the negotiations that preceded Region 10's April 4, 2000, decision to propose the site for listing, the Tribes were neither invited to participate in or consulted regarding the negotiations.

As a result of the post-decision negotiations with Oregon DEQ, EPA's listing proposal divides the Portland Harbor site into two "sites": an in-river site and an uplands site. EPA proposes that it take responsibility for cleanup of the in-river portion and that Oregon DEQ take responsibility for cleanup of the uplands portion. Only the in-river portion of the Portland Harbor site is included in the NPL listing proposal.

We have several concerns about EPA's proposal to list<sup>1</sup> only the in-river portions of the Portland Harbor site. First, we believe that EPA oversight would result in the most thorough cleanup. Second, segregating the upland sources from the NPL site could compromise the Tribes' ability to bring claims for natural resource damages. Third, the Warm Springs Tribes have limited staff. Creating two separate cleanup processes reduces our ability to participate in and monitor cleanup activities. Fourth, although we understand that upstream sources may be responsible for some of the contaminants within the Portland Harbor area, it makes little sense from a cleanup perspective to draw a jurisdictional line between the in-river sediments and the adjacent uplands sources.

We believe EPA's decision to exclude the Tribes from the negotiations that led to segregation of the upland and in-river areas was inconsistent with EPA Region 10's internal policy on Tribal Consultation, Executive Order 13084, and EPA's trust responsibility to the Tribes. The Warm Springs Tribes would like assurance from EPA that its decision to segregate the upland areas from the in-river areas will not compromise the Warm Springs Tribes' rights or limit our ability to participate in and monitor cleanup activities.

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<sup>1</sup> We recognize that the actual site boundaries will be fixed at a later date, but we remain concerned that early segregation of the in-river and upland areas will affect subsequent site boundary decisions.

The Warm Springs Tribes look forward to working with EPA to ensure our full involvement in Portland Harbor cleanup decisions.

Our staff contact for Portland Harbor issues is:

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[brnye@wstribes.org](mailto:brnye@wstribes.org)

Sincerely,



Robert A. Brunoe  
General Manager, Department of Natural Resources

Cc: Off-Reservation Fish and Wildlife Committee